

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7268 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

GIRIRAJ LILABAHADUR RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/11/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Mr. M.M. Tirmizi for the petitioner and learned AGP Mr. D.P. Joshi for the respondents.

2. The detention order dtd. 25/1/99 passed by the respondent NO. 2 - Commissioner of Police, Ahmedabad, against the petitioner in exercise of powers conferred under Sec.3(1) of Gujarat Prevention of Anti-social

Activities Act, 1985 (PASA for short), is challenged in the present proceedings under Article 226 of the Constitution of India.

3. The grounds of detention supplied to the petitioner alongwith the translation, is produced at Annexure-B interalia indicate that four Prohibition Cases were registered at Nashabandhi Police Station on 7/9/97, 12/10/98, 17/11/98 and 24/1/99. It further indicates that two witnesses on assurance of their anonymity have supplied information against the bootlegging activity of the petitioner in respect to the incident dtd. 27/12/98 and 2/1/99. That in consideration of the said material, the respondent No. 2 has come to the conclusion that the petitioner is a bootlegger within the meaning of Sec.2(b) of PASA. That enforcement of general provisions of law is not likely to prevent the petitioner from continuing his antisocial activity which prejudicially affect the maintenance of public order and as such the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds.

It is contended at bar that on the date of passing impugned order, the petitioner was in judicial custody in respect to C.R. No. 81/99. That the detaining authority has failed to consider the less drastic remedy regarding cancellation of bail in respect to cases registered against the petitioner and has passed the impugned order which amounts to non-application of mind and hence the detention order is invalid.

5. That in the matter of Jubedabibi Vs. State of Gujarat, reported vide 95(2) GLR page 1134, the Division Bench of this Court has expressed the view to the effect that non-consideration of less drastic remedy like cancellation of bail available under Sec. 437(5) of Cr.P.C. amounts to non-application of mind vitiating subjective satisfaction of the detaining authority and rendering the detention order invalid. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal NO. 1056/99 decided by this Court on 15/9/99 (Coram C.K. Thakkar and A.L. Dave, JJ).

6. On scrutiny of ground of detention, it appears that the detaining authority has shown apprehension that as the petitioner is in a judicial custody with respect to C.R.No. 81/99. The petitioner is likely to apply for bail at any time and having got himself released on bail,

he is likely to continue his antisocial activity and as such the detention order is necessary. The said reasoning suggests that the detaining authority has failed to consider the less drastic remedy like opposing or cancellation of bail as permissible under Sec. 437(5) of the Cr.P.C., as such the subjective satisfaction having been vitiated for the said nonapplication of mind and the detention order is bad in law.

7. As the petition succeeds on the above said ground alone, it is not necessary to consider other contentions raised at bar.

8. On the basis of the aforesaid observation, the petition is allowed. The detention order dtd. 25/1/99 passed by the respondent No.2 - Commissioner of Police, Ahmedabad, against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu namely Giriraj Lilabahadur Rajput is ordered to be set at liberty forthwith, if not required in any other case.

Rule to that extent is made absolute.

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